No. 14-723

IN THE
Supreme Court of the United States

ROBERT MONTANILE,
Petitioner,
v.
BOARD OF TRUSTEES OF THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

BRIEF OF UNITED POLICYHOLDERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF *AMICUS CURIAE* UNITED POLICYHOLDERS

INTEREST OF THE *AMICUS CURIAE*[1]

United Policyholders ("UP") is a non-profit 501(c)(3) organization founded in 1991 that serves as a voice and an information resource for insurance consumers in all 50 states. As part of its mission, UP monitors the implementation and application of laws and rules under the Employee Retirement Income and Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, because a substantial percentage of the insurance market is governed by ERISA.

UP's work is divided into three program areas: *Roadmap to Recovery* (claim assistance), *Roadmap to Preparedness* (promoting insurance/financial literacy) and *Advocacy and Action* (advancing the interests of insurance consumers in courts of law, before regulators and legislators, and in the media). Donations, foundation grants and volunteer labor support the organization's work. UP does not accept funding from insurance companies.

Advancing the interests of policyholders through participation as *amicus curiae* in insurance-related cases throughout the country is an important part of UP's work. UP's reputation as a reliable

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no person or entity other than the *amicus curiae*, and its undersigned counsel, made a monetary contribution to the preparation or submission of this brief. No attorney for any party authored this brief in whole or in part. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office in accordance with Supreme Court Rule 37.3(a).

friend of the court was enhanced when its *amicus curiae* brief was cited in this Court's opinion in *Humana v. Forsyth,* 525 U.S. 299 (1999), and its arguments were adopted by the Texas Supreme Court in *Excess Underwriters at Lloyd's, London, et al. v. Frank's Casing Crew & Rental Tools Inc.,* 246 S.W.3d 42 (Tex. 2008), as well as by the California Supreme Court in *Vandenberg v. Superior Court,* 88 Cal. Rptr.2d 366 (Cal. 1999) and numerous other proceedings including *TRB Investments, Inc. v. Fireman's Fund Ins. Co.,* 145 P.3d 472 (Cal. 2006). Other ERISA cases in which UP has been granted leave by the Supreme Court to participate as *amicus curiae* include: *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 134 S. Ct. 604 (2013); *US Airways v. McCutchen,* 133 S. Ct. 1537 (2013); *Hardt v. Reliance Standard Life Insurance Co.*, 130 S. Ct. 2149 (2010); *Metro. Life Ins. Co. v. Glenn,* 554 U.S. 105 (2008); *Aetna Health, Inc. v. Davila,* 542 U.S. 200 (2004); and *Rush Prudential HMO v. Moran,* 536 U.S. 355 (2002).

We seek to assist the Court in this case because of its potential impact on millions of employees and policyholders enrolled in employee benefit plans governed by ERISA.

SUMMARY OF ARGUMENT

This case does not involve disability benefits, but a number of the cases involved in the circuit split are disability benefit cases;[2] and the Court's decision could have broad-reaching implications for participants in disability plans as well as health plan participants.

Most, if not all, employer-sponsored disability benefit plans coordinate benefits with other sources of disability income, the most important of which are Social Security benefits. Because a Social Security disability claim may take months, if not years, to resolve, and since the outcome is uncertain, disability benefit plans normally issue full benefit payments to claimants, and then seek reimbursement of the overpaid benefits in the event Social Security disability benefits are subsequently awarded.

If a disability claimant fails to reimburse the plan, the disability plan may reduce benefits prospectively until the overpayment is recovered. *See, e.g., Northcutt v. GM Hourly-Rate Emple.*

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[2] *See Thurber v. Aetna Life Ins. Co.*, 712 F.3d 654 (2d Cir. 2013), *cert. denied* 134 S. Ct. 2723 (2014) (affirming right of ERISA plan administrator to recover overpaid disability benefits from claimant's general assets); *Funk v. CIGNA Group Ins.*, 648 F.3d 182 (3d Cir. 2011) (same); *Cusson v. Liberty Life Assurance Company*, 592 F.3d 215 (1st Cir. 2010) (same); *Gutta v. Standard Select Trust Ins. Plans*, 530 F.3d 614 (7th Cir. 2008) (same); *but see Bilyeu v. Morgan Stanley Long Term Disability Plan*, 683 F.3d 1083 (9th Cir. 2012), *cert. denied* 133 S. Ct. 1242 (2013) (deeming ERISA lien unenforceable).

Pension Plan, 467 F.3d 1031, 1035-38 (7th Cir. 2006) (acknowledging that disability plan administrators have a right of setoff to recoup the overpayment). If, however, the payment of disability benefits has ceased, then so long as the benefit plan contains a right of reimbursement comparable to the "Acts of Third Parties" provision that was the subject of *Sereboff v. Mid Atl. Med. Servs.*, 547 U.S. 356 (2006), the plan may seek reimbursement pursuant to Section 502(a)(3) of the Employee Retirement Income and Security Act ("ERISA"), 29 U.S.C. § 1132(a)(3).

However, unlike other funds from which an ERISA welfare benefit plan might seek reimbursement, a retroactive award of Social Security disability benefits is subject to Section 207 of the Social Security Act, 42 U.S.C. § 407, which prohibits the assignment or attachment of Social Security benefits. To circumvent this statutory bar, a disability plan seeking to recoup an overpayment following a Social Security award must thus attempt to characterize its claim as asserting a lien on the overpaid disability benefits and not as a claim to be reimbursed from the Social Security benefits. Yet once the disability benefits have been dissipated and the only funds remaining are the Social Security payments, such reimbursement suits by the plan are indistinguishable from garnishment proceedings prohibited by 42 U.S.C. § 407.

The rule advanced by the Ninth Circuit in *Bilyeu v. Morgan Stanley Long Term Disability Plan*, 683 F.3d 1083 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 1242 (2013), and the Eighth Circuit in

Treasurer, Trustees of Drury Indus., Inc. Health Care Plan & Trust v. Goding, 692 F.3d 888 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 1644 (2013), prohibits ERISA fiduciaries from imposing a lien seeking recovery from dissipated or untraceable assets because such a recovery constitutes legal, not equitable, relief. The impact of that rule on disability plans will be small, because plans may reduce prospective benefits to satisfy their overpayments in most situations. And the overwhelming majority of disability claimants who qualify for Social Security benefits will also continue receiving benefits. Indeed, this Court has ruled that the termination of disability plan benefits to a participant who has been awarded Social Security benefits suggests "procedural unreasonableness." *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 118 (2008). In the rare instance where the disability benefit participant is no longer receiving benefits from the plan, it is often the disability plan, and not the claimant, that has broken its promise. The rule adopted by the Eighth and Ninth Circuits thus furthers the salutary purpose of both ERISA and the Social Security Act by ensuring that vulnerable plan participants are protected from actions by insurance companies and other plan administrators who abnegate their fiduciary duties in search of profits. *See id.*

Adopting the view presented by Petitioner will therefore ensure that the remedies available to a fiduciary under ERISA § 502(a)(3) maintain their equitable character as well as observe the letter of Section 207 of the Social Security Act prohibiting the assignment of Social Security benefits.

ARGUMENT

I. Equitable Liens by Agreement Are Not Enforceable Against Social Security Disability Benefits Pursuant to 42 U.S.C. § 407

A. How Long-Term Disability Benefits Coordinate with Social Security and Other Benefits

Employer-sponsored disability insurance provides a critical safety net for U.S. workers. At least 32.1 million people in the United States receive disability insurance coverage through their employers.[3] Of that number, approximately 653,000 people receive disability payments.[4]

Group disability insurance plans typically offer income replacement at a rate equivalent to 60% of the employee's pre-disability income.[5] Most plans provide that disability benefits may be reduced by "other income benefits," including Social Security disability benefits (both primary and dependent), worker's compensation benefits, and disability pension benefits, with Social Security disability benefits comprising the largest share. Over 70% of long-term disability claimants also concurrently

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[3] The most recent data available is from 2013. Council for Disability Awareness, *2014 Long Term Disability Claims Review* 1 (2014) (*LTD Claims Review*), *available at* http://www.disabilitycanhappen.org/research/CDA_LTD_Claims_Survey_2014.pdf.

[4] *Id.* at 3.

[5] U.S. Dep't of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States* 305 tbl. 30 (Mar. 2014), *available at* http://www.bls.gov/ncs/ebs/benefits/2014/ebbl0055.pdf.

receive Social Security disability benefits.[6] In contrast, only four to six percent of long-term disability claimants receive worker's compensation and disability pension benefits, respectively.[7]

Coordination of long-term disability benefits with Social Security benefits is desirable, in that it reduces the cost to employers of offering these plans and ensures that disability claimants do not "double dip" by receiving more than the percentage of income replacement promised by the plan. Unfortunately, the Social Security disability claim adjudication process can last months, if not years.[8] To bridge the gap between the onset of disability and the award of Social Security benefits and protect against the uncertainty of the claimant even meeting the arduous Social Security disability standards set forth in 42 U.S.C. § 423(d)(1)(A), most disability insurers issue unreduced payments in exchange for a promise by the recipient to repay those benefits once Social Security is awarded.

The typical disability plan contains a two-tiered definition of disability that pays benefits for the first 24 months to a claimant who is unable to perform the material duties of the employee's "own occupation."[9] After 24 months, benefits remain

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[6] *LTD Claims Review*, *supra* note 3, at 4.

[7] *Id.* at 3; Robert W. Beal *et al.*, *Group Long-Term Disability Benefit Offset Study – 2012* 33 tbl. V(a) (July 2013), *available at* http://www.soa.org/Files/Research/Projects/research-2013-group-ltd-offset-update.pdf.

[8] *Id.* at 22 tbl. III(s).

[9] Advisory Council on Employee Welfare and Pension Plans, *Managing Disability Risks in an Environment of Individual*

payable if the disability renders the employee from engaging in "any occupation" for which the employee is qualified by education, training or experience. *Id.* The Social Security Administration utilizes a more stringent definition of disability than either the "own occupation" or "any occupation" definition of disability in the typical disability policy, defining "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than 12 months[.]" 42 U.S.C. § 423(d)(1)(A).

Because a termination of benefits is, in most situations, inconsistent with an award of Social Security disability benefits under the Social Security Act's stringent standard, an insurer attempting to recoup overpaid disability benefits should usually have a future stream of benefits from which the overpayment can be recovered. *See, e.g., Northcutt*, 467 F.3d at 1035-38 (affirming the right of ERISA plan administrator to reduce long-term disability payments prospectively). If, however, the claimant is no longer receiving disability benefits at the time of the Social Security award, the plan's options to seek reimbursement are limited. ERISA preempts all state laws that "relate to" an employee benefit plan, including a common law breach of contract action brought by a plan to enforce a contractual reimbursement provision. 29 U.S.C. § 1144(a). Thus, the plan's only recourse, so long as the plan contains

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Responsibility 11 (Dec. 2012), *available at* http://www.dol.gov/ebsa/pdf/2012ACreport2.pdf.

appropriate reimbursement language, is to file suit under Section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizing suits for "other appropriate equitable relief."

Section 502(a)(3) has been interpreted to provide only "those categories of relief that were typically available in equity." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256 (1993). In *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 214 (2002) and *Sereboff*, 547 U.S. at 364-65, this Court explained that a reimbursement provision contained in the benefit plan gives rise to an "equitable lien by agreement" that attaches as soon as the funds from which reimbursement is sought are in the participant's possession. However, as both the Ninth Circuit in *Bilyeu* and Petitioner have pointed out, under *Knudson* and *Sereboff*, an equitable lien by agreement cannot be enforced against dissipated funds. *Bilyeu*, 683 F.3d at 1094-97; Pet. Br. at 23-29. Thus, this Court's precedents suggest the absence of a remedy where an ERISA fiduciary seeks to enforce a reimbursement provision over funds that have been dissipated.

B. 42 U.S.C. § 407(a) Precludes Assignment of Social Security Disability Benefits

Section 207 of the Social Security Act, 42 U.S.C. § 407(a), presents yet another obstacle for disability plans seeking to recover Social Security disability overpayments. That provision states:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law

> or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

The purpose of § 407 is to protect Social Security beneficiaries from creditors' claims. *Mason v. Sybinski*, 280 F.3d 788, 793 (7th Cir. 2002); *Dionne v. Bouley*, 757 F.2d 1344, 1355 (1st Cir. 1985). In *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 415-16 (1973), this Court ruled that § 407 barred an attempt by a New Jersey governmental agency to attach retroactive Social Security payments deposited into the petitioner's bank account, despite the fact that the petitioner had previously signed a reimbursement agreement in order to receive interim state welfare benefits while his application for the federal benefits was pending. Similarly, in *Bennett v. Arkansas*, 485 U.S. 395 (1988), this Court ruled that § 407 preempted a state statute that permitted seizure of prisoners' Social Security benefits, observing that § 407 manifests the "clear intent of Congress that Social Security benefits not be attachable."

Importantly, *Philpott* held that although the benefits had been deposited into a bank account that was not specifically designated exclusively for Social Security benefits, the funds nevertheless retained the quality of "moneys" within the purview of § 407. 409 U.S. at 416. Subsequent courts have similarly treated an unsegregated bank account as

"consist[ing] of Social Security benefits," thus precluding attachment of the entire account. *See Dionne*, 757 F.2d at 1346 (ruling that post-judgment attachment of plaintiff's bank account, which consisted in part of Social Security funds, was improper).

In the ERISA context, courts have recognized that § 407(a) prohibits ERISA plan administrators from imposing a lien directly on Social Security benefits. *See, e.g., Bilyeu*, 683 F.3d at 1093-94 ("Under the Social Security Act, Bilyeu could not assign her social security benefits, and Unum could not attach them."); *Weitzenkamp v. Unum Life Ins. Co. of Am.*, 661 F.3d 323, 332 (7th Cir. 2011) ("Unum cannot impose a lien directly on Weitzenkamp's social security benefits."); *Epolito v. Prudential Ins. Co. of Am.*, 737 F Supp. 2d 1364, 1383 (M.D. Fla. 2010) ("To the extent Prudential seeks to recover the overpaid benefits resulting from Epolito's receipt of retroactive SSD benefits by imposing an equitable lien on the SSD benefits themselves, such a claim is barred by 42 U.S.C. § 407(a)."); *Mote v. Aetna Life Ins. Co.*, 435 F. Supp. 2d 827, 830 (N.D. Ill. 2006) (ruling that ERISA action to recover overpaid long-term disability benefits in an amount identical to the claimant's Social Security award was barred by § 407(a)); *Ross v. Pa. Mfrs. Ass'n Ins. Co.*, No. 1:05-0561, 2006 U.S. Dist. LEXIS 33875, at *22-23 (S.D. W. Va. May 22, 2006) (declining to impose constructive trust over future Social Security payments).

C. To Evade 42 U.S.C. § 407(a), Disability Plans Seeking to Recover Social Security Benefits Must Instead Impose Liens on Overpaid Long-Term Disability Benefits, But That Approach Is Problematic

To circumvent § 407(a), disability plans seeking to recover Social Security disability benefits instead assert that their lien is over the disability benefits that had previously been paid rather than the benefits resulting from the Social Security award. That practice was condoned without much discussion in both *Cusson v. Liberty Life Assurance Company*, 592 F.3d 215, 232 (1st Cir. 2010) and *Weitzenkamp v. Unum Life Insurance Company of America*, 661 F.3d at 332. Those authorities both remarked that § 407(a) did not bar an insurer from recovering overpaid long-term disability benefits, even though the amount of the alleged overpayment was identical to the retroactive Social Security payment.[10]

However, the Ninth Circuit exposed the underlying problem with that rationale in *Bilyeu v. Morgan Stanley Long Term Disability Plan*, 683 F.3d

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[10] The distinction between Social Security benefits and overpaid long-term disability benefits was also ignored by the Third Circuit in *Funk v. CIGNA Group Ins.*, 648 F.3d at 194-95, which failed even to acknowledge the statutory bar imposed by § 207 of the Social Security Act and remarked, "Because the Plan and Reimbursement Agreements at issue here likewise specify the receipt of Social Security benefits as the particular fund from which reimbursement is to be made, they give rise to an equitable lien by agreement over those Social Security funds that are overpayments under the Plan."

at 1093-94. *Bilyeu* noted that unlike the third-party tort recovery in *Sereboff* or the contingent fee in *Barnes* v. *Alexander*, 232 U.S. 117, 121 (1914) (cited favorably in *Sereboff*), "the overpaid disability benefits are not a particular *fund*, but a specific amount of money encompassed *within* a particular fund -- the long-term disability benefits Unum paid to Bilyeu." *Id.* at 1093 (citing *Sereboff*, 547 U.S. at 364). Unum could have avoided that problem had it asserted a lien on the Social Security benefits themselves, but such an action was foreclosed by § 407(a).

Furthermore, the Ninth Circuit noted that the funds were no longer in Bilyeu's "possession or control" because she had spent them. *Id.* at 1094 (citing *Sereboff*, 547 U.S. at 363). The Ninth Circuit suggested that other courts, which had interpreted *Sereboff* as eliminating the requirement of strict tracing requirement once an equitable lien has attached to a particular fund, were mistaken, observing:

> The tracing issue in *Sereboff* was whether Mid Atlantic could obtain an equitable lien against specifically identified funds when Mid Atlantic had never possessed those funds itself -- an issue that has no relevance here. *See Sereboff, 547 U.S. at 364-65.* Nothing in *Sereboff* suggests that a fiduciary can enforce an equitable lien against a beneficiary's *general assets* when specifically identified funds are no longer in a beneficiary's possession.

Bilyeu, 683 F.3d at 1095. Other courts have similarly declined to extend *Sereboff*'s discussion of tracing rules to suits by a fiduciary to impose a lien over dissipated funds. *See Epolito*, 737 F. Supp. 2d at 1381 (collecting cases).

From a practical standpoint, the fact remains that the liens at issue in cases where insurers' reimbursement rights were recognized as stating claims pursuant to 29 U.S.C. § 1132(a)(3) are impermissible liens over Social Security benefits. The typical disability claimant is already reduced to living on a percentage of her prior income (typically 60 percent); unless the disability benefit beneficiary possesses independent financial means, disability benefits are used to pay for the necessities of life – food, clothing, and shelter. The notion that the disability benefits would remain in a beneficiary's bank account is highly unlikely, as acknowledged in *Mote*, 435 F Supp. 2d at 830. In response to an insurer's argument that it sought to impose a lien not on the claimant's Social Security benefits but rather on the overpaid long-term disability benefits, the court remarked: "That's obviously just not so -- instead the funds on which defendants seek to impose an equitable lien are exactly the same funds that the law labels and treats as Social Security funds that are taken out of reach by Section 407(a)." *Id.* By recognizing that an equitable lien by agreement cannot be imposed on funds that are no longer in existence (other than in situations where claimants attempted to defraud the benefit plans)[11],

[11] Plan administrators may still pursue a state law claim for fraud or intentional interference with contract against a

the protections of both ERISA and Social Security Act will be preserved.

II. The Eighth and Ninth Circuits' Approach Does Not Unduly Burden Disability Insurance Plans and Is Consistent with Congressional Intent

This Court should adopt the view of the Eighth and Ninth Circuits and rule that an equitable lien by agreement is unenforceable under ERISA § 502(a)(3) where the underlying assets to which the lien attached have been dissipated or are otherwise untraceable. The practical effect of such a rule on long term disability benefits will be minimal, since insurers retain the right to recoup overpaid long-term disability benefits by garnishing future benefits. Moreover, since the Social Security Administration utilizes a more stringent definition of disability than most disability insurance companies, the percentage of claimants whose disability benefits are terminated prior to a Social Security award will be small. And when that situation does occur, as this Court recognized in *Glenn*, 554 U.S. at 118, the circumstances are often suspect.

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claimant where the circumstances suggest that the claimant willfully dissipated funds or withheld material information. *See, e.g., Trs. of the AFTRA Health Fund v. Biondi*, 303 F.3d 765 (7th Cir. 2002) (ruling ERISA did not preempt action by plan for fraud where plan participant concealed his marital status); *Health Cost Controls v. Bode*, No. 93 C 3557, 1994 U.S. Dist. LEXIS 7820 (N.D. Ill. June 8, 1994) (ruling that attorney tortiously interfered with contract between an ERISA plan and plan participant by intentionally distributing settlement proceeds that were subject plan's lien).

In accord with *Glenn*, courts consistently have ruled that a termination of benefits, notwithstanding a Social Security award, is arbitrary and capricious. *See, e.g., Raybourne v. Cigna Life Ins. Co. of New York*, 700 F.3d 1076, 1087 (7th Cir. 2012); *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 679 (9th Cir. 2011); *Connor v. Sedgwick Claims Mgmt. Servs., Inc.*, 796 F. Supp. 2d 568, 585 (D.N.J. 2011). Two leading disability insurers, along with their subsidiary underwriting companies, have agreed to give deference to the Social Security Administrations findings of disability following market conduct investigations into their claims practices. *See* http://www.maine.gov/pfr/insurance/Admin_Enforcement_Actions/RSA_2013/CIGNA_RSA.pdf; https://maine.gov/pfr/insurance/unum/ UNUM_Regulatory_Settlement_Agreement.htm; *see generally* John Langbein, "Trust Law as Regulatory Law: The Unum/Provident Scandal and Judicial Review of Benefit Denials Under ERISA," 101 Nw. U. L. Rev. 1315 (2007).

The rule advanced by the Eighth and Ninth Circuits strikes the correct balance between containing plan costs and also protecting ERISA plan participants from the overly harsh consequences that too often result from insurance companies' reimbursement practices. The rule advanced by the Eighth and Ninth Circuits is also consistent with Congress's intent in enacting ERISA, which speaks of protecting the interests of plan participants and beneficiaries, not those of plan sponsors. 29 U.S.C. § 1001(a). ERISA treats plan sponsors as trustees and imposes upon them fiduciary duties of loyalty and care. *See* 29 U.S.C.

§ 1104. In *CIGNA Corp. v. Amara*, 131 S. Ct. 1866, 1880 (2011), this Court observed that courts of equity routinely awarded make-whole relief to victims of a breach of trust. However, this Court has declined to interpret "other appropriate equitable relief" within the meaning of 29 U.S.C. § 1132(a)(3) to encompass "whatever relief a common-law court of equity could provide," since such an interpretation "would limit the relief not at all." *Mertens*, 508 U.S. at 257. Consequently, in *Knudson*, this Court declined to permit an ERISA fiduciary to enforce an equitable lien by agreement against a claimant's general assets, even though doing so left the plan without a remedy. 534 U.S. at 214.

Here, too, this Court should decline to enforce a welfare benefit plan's equitable lien where the assets to which the lien purports to attach have been expended for necessary living expenses and not to defraud a creditor, and where the only available assets to satisfy the claim are Social Security benefits which are protected from creditors pursuant to 42 U.S.C. § 407(a). Although such a rule may leave plan sponsors without a remedy in rare instances, that is precisely the balance Congress struck when it enacted ERISA. In the disability benefits context, the view presented by Petitioner, consistent with the approach adopted by the Eighth and Ninth Circuits, furthers ERISA's purpose by ensuring that plan participants are protected from lawsuits by unprincipled insurance companies, who would terminate disability benefits even in the face of a Social Security award; it also acknowledges Congress' paternalistic protection of Social Security

benefits against liens, garnishment, and other forms of attachment.

CONCLUSION

For the foregoing reasons, United Policyholders urges the Court to reverse the decision of the Eleventh Circuit Court of Appeals.

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